IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.638 OF 2004
IN
SUMMARY SUIT NO.1925 OF 2004

Abbas Samsuddin Fatehi ..Plaintiffs

Vs.

Mohammedi Abdul Hasan Fatehi ..Defendant

Ms.Naseem Patrawala i/b P.mehta Mithi and Co. for the plaintiffs

Ms.Alpana Ghone i/b S.Satpute and Co. for the defendant

CORAM : S.U.KAMDAR, J
DATED : 21ST SEPTEMBER, 2005

P.C.:

1. The present suit is filed on the promissory note for sum of Rs.50 lacs which is Ex.A to the plaint with interest therein due and payable by the defendants to the plaintiffs for the sum of Rs.81,45,967.89.

2. The defendants have filed reply and raised defence that infact there was a separate transaction of flat and for which MOU was executed. On perusal of the said document it is clear that sum of Rs.50 lacs has been received by the

defendant and against that defendant was to hand over possession of the flat. It is an admitted position that defendant has not done so. Obviously, plaintiffs have filed present suit for recovery of amount given to defendant as loan as mentioned in clause (b) of the said MOU. In that view of the matter, I find no defence. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit a sum of Rs.80 lacs within 4 weeks, failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.